

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: OMG Midwest, Inc. d/b/a/ Hallett Materials Osceola County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2013-WW- 01
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**TO: Kyle Jackson, Senior Counsel
Hallett Materials
P.O. Box 3365
Des Moines, IA 50316**

I. SUMMARY

This administrative consent order (order) is entered into between OMG Midwest, Inc. d/b/a Hallett Materials (OMG Midwest) and the Iowa Department of Natural Resources (Department) for the purpose of resolving OMG Midwest's violations of the terms and conditions of its wastewater National Pollution Discharge Elimination General Permit No. 5, (NPDES permit) and applicable Department rules including general water quality standards. The order assesses a penalty and requires OMG Midwest to comply with its NPDES permit and cease all illegal discharges to waters of the state. In the interest of avoiding litigation, the parties have entered into this order and agree to the provisions set forth below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist
IDNR Field Office #3
1900 N. Grand Gateway North, Suite E17
Spencer, IA 51301
712/262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. OMG Midwest operates numerous sites throughout the state. One of which is a sand and gravel quarry known as the Ashton North Sievert Pit (quarry) located at Section 28 T98N, R42W Gilman Township, Osceola County, Iowa. This property is locally known as 4935 250th Street, Ashton, Iowa 51232. Hallett Materials and Construction is listed as the deed holder to this land. As part of the quarry operations water is discharged to Otter Creek, which runs east to west along the south edge of the site. OMG Midwest discharges wastewater pursuant to a NPDES General Permit Number 5 which was issued to Hallett Materials on August 22, 2011.

Current Violations

2. On January 13, 2012, OMG Midwest submitted a Monthly Operation Report (MOR) to the Department. In this MOR, OMG Midwest reported violations of the Total Suspended Solids (TSS) 30 day average limit established in its NPDES permit (30mg/L) during the months of March and June. It reported that in March the TSS 30 day average was 31mg/L and in June its TSS 30 day average was 33mg/L.

3. On April 19, 2012, the Department received a complaint alleging that water in Otter Creek near the quarry was discolored. The water was described as reddish brown with no apparent odor.

4. On the same day, following receipt of this complaint, Joe Pille, Environmental Coordinator of OMG Midwest, confirmed to the Department that a discharge of an unknown amount of water containing fine suspended clay solids had occurred from the quarry's outfall to Otter Creek.

5. On April 20, 2012, Mr. Pille sent the Department a letter confirming that on April 19, 2012, a discharge of solids in excess of OMG Midwest's NPDES permit limits did occur. This letter informed the Department of several actions which were initiated by OMG Midwest in response to the discharge.

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6. On August 14, 2012, the Department received another complaint alleging that a discharge from the quarry had turned Otter Creek a rusty orange color. The complainant indicated that this was not the first occurrence and that they had observed the orange color in the creek on previous occasions.

7. On August 14, 2012, at approximately 1:30 pm Tom Roos, an Environmental Specialist with the Department, went to the quarry to investigate. Once on site he met with Mike Wolthuis, Quarry Supervisor for OMG Midwest, and explained the nature of the complaint. Together they proceeded to the location of the outfall which discharges to Otter Creek. At that time no discharge from the outfall was observed. However, Mr. Roos did observe that the water downstream of the outfall had a rusty orange tint and orange sediment had settled at the bottom of the creek. The water upstream from the outfall was slightly turbid but did not contain an orange coloration. Mr. Wolthuis informed Mr. Roos that OMG Midwest normally turns the discharge pump on at approximately 6:00 am and turns it off at approximately 10:00 am. However, on August 14, 2012, he had left the pump on longer than normal and did notice that some unsettled wash water had been discharged. Mr. Roos took photographs and collected lab samples upstream and downstream of the outfall. These samples were sent to the University of Iowa Hygienic Laboratory for analysis and the results indicated an elevated level of TSS downstream of the outfall. The results are below:

Downstream of outfall: TSS 30mg/L

Upstream of outfall: TSS 18mg/L

8. In response to the above violation OMG Midwest prepared a discharge plan for the quarry. This discharge plan detailed steps OMG Midwest will take to control its discharge of TSS.

9. On September 17, 2012, the Department sent OMG Midwest a Notice of Violation letter for the above discussed violations. This Notice of Violation indicated that the matter would be referred to the Department's Legal Services Bureau for enforcement which may include a monetary penalty.

Past Violations

10. In July of 2009, OMG Midwest entered into Consent Order No. 2009-WW-17. This consent order was issued for various violations of OMG Midwest's effluent limits contained in its NPDES General Permit No. 5. These violations occurred at its Mediapolis, Iowa (Nelson Quarry) stone quarry site.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts show noncompliance with this provision.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Because the discharge referenced herein was in violations of OMG Midwest's permit, the foregoing facts establish that these provisions have been violated.

3. 567 IAC 61.3(2) "a" "b", "c" and "e" state that

a. Such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits.

b. Such waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance.

c. Such waters shall be free from substances attributable to wastewater discharges ... producing objectionable color, odor or other aesthetically objectionable conditions. ...

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate that OMG Midwest violated these legal requirements.

V. ORDER

THEREFORE, the Department orders and OMG Midwest agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. OMG Midwest shall cease all illegal discharges to waters of the State;
2. OMG Midwest shall comply with all requirements contained in its NPDES permit; and

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3. OMG Midwest shall pay a penalty of \$6,000.00 within 30 days of the Director of the Department signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** The sand and gravel wastewater discharge from this facility could have been avoided through the use of alternative disposal methods such as pumping to another quarry to allow time for settling. This disposal method would have an additional cost associated with digging a settling basin, setting up lines, and running additional pumps for dewatering. This additional cost is estimated to be \$2,000.00. Therefore, \$2,000.00 is assessed for economic benefit.

3. **Gravity of the Violation:** Failure to properly manage and treat sand and gravel wastewater from this facility has allowed pollutants to enter Otter Creek and has contributed to the degradation of the creek's overall water quality. Degraded water quality harms aquatic life, and prevents the attainment of state water quality goals. Therefore, \$2,000.00 is assessed for this factor.

4. **Culpability:** OMG Midwest has been professionally involved in the business of sand and gravel mining for numerous years and entered into Consent Order No. 2009-WW-17 for similar violations. Further, OMG Midwest was aware of the discharge limits set forth in its NPDES permit. For these reasons \$2,000.00 is assessed for this factor.

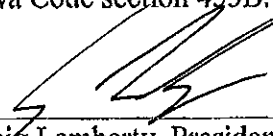
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of OMG Midwest. By signature to this order, all rights to appeal this order are waived.

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VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Craig Lamberty, President OMG Midwest, Inc.

Dated this 16 day of
January, 2013.



Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 17th day of
January, 2013.

Field Office 3, Carrie Schoenebaum; Tom Roos, I.C.1,6 (a).